IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.552 OF 1989.

The State of Maharashtra ..Appellant

versus

Dilip Raghunath Chavan
res. of Kadvali,
Taluka Khed,
Dist: Ratnagiri ..Respondent
(Original Accused)

Mr.V.B.Konde-Deshmukh for the Appellant
Mr.S.M.Kazi for the Respondent

Coram : D.G.Deshpande &
S.R.Sathe, JJ.
Dated : 3rd May, 2007

JUDGMENT (PER S.R.SATHE, J)

1. The State of Maharashtra has filed this appeal against the judgment and order passed by the Sessions Judge, Ratnagiri in Sessions Case No.50 of 1988 whereby the accused was acquitted of the offences punishable under Section 302, 307 and 325 of I.P.C.

2. Brief facts giving rise to this appeal are as under:

. Prosecution witness No.6 Sakharam Ganpat Jadhav was residing at village Tural alongwith his

wife Savitri and their children, including his married daughter Sulochana the wife of the present accused Dilip Raghunath Chavan. Not only that, but even accused had come to their house a day prior to the date of incident. On that day he had suggested that he would take his wife Sulochana to Sakharappa. However, the prosecution witness No.6 Sakharam had suggested that first he (accused) should seek some job and secure accommodation for residence and then take Sulochana with him.

3. On the day of incident i.e. on 2.5.1988 Sakharam returned home in the evening. When he got down from the S.T. bus he found that accused was waiting for the bus. At that time, accused asked Sakharam as to whether he would be sending Sulochana with him or not. He was in angry mood. Sakharam tried to pacify him and told him that first he should get job and then take his wife. When Sakharam reached home, his wife Savitri, the deceased in the instant case told him that she told the accused that he should not take Sulochana till the arrival of Sakharam. On that day at night Sakharam and other family members waited for a long time with a hope that accused will return for taking

meals. However, till late at night he did not return. Hence, the other family members finished their dinner and went to bed.

4. When prosecution witness Sakharam was sleeping in the courtyard, he received a blow with knife on his stomach. As a result of the same Sakharam woke up. When he opened his eyes he found that the accused was standing infront of him with knife in his hand and about to give another blow to Sakharam. Naturally, Sakharam raised shouts. Hearing the said shout his wife Savitri woke up, but the accused also gave knife blows on her chest and back. She had also raised shouts. Hearing their shouts Sulochana awoke, but the accused gave blow with knife to her also. When accused was trying to run away from the said place Sakharam tried to catch him, however, he could not succeed and the accused ran away from the said place. As a result of the knife blows received at the hands of accused Savitri fell on the ground, so also Sakharam.

5. It is the prosecution case, that complainant Adik Mohite who was having his house on the backside of the house of prosecution witness Sakharam, heard

some shouts as "Marle, Marle" at about 11.00 or 11.30 p.m. At that very time Ashok and Laxman Sakharam's children came to his house weeping and they told that the accused assaulted Sakharam, Sulochana and Savitri. Adik Mohite therefore went to the house of Sakharam alongwith Ashok and Laxman. He found that Sakharam had sustained injuries. When Adik made queries with him Sakharam told him that his son in law i.e. accused assaulted him, his wife and Sulochana with knife. Even Savitri also told Adik that accused assaulted her with knife. Adik gave water to Savitri, however, within 10 to 15 minutes she succumbed to the injuries. On the next day morning, at about 10.00 O'Clock, Adik went to Sangameshwar Police Station which was at a distance of about 10 to 12 kilometres from Tural, and lodged a complaint wherein he narrated the incident and told the police that Sakharam, Savitri and Sulochana disclosed to him that they were assaulted by the accused with knife.

6. On the basis of the said complaint, police registered C.R.No.35 of 1988 against the accused for the offences mentioned above. Immediately thereafter i.e. on 3.5.1988 at about 11.15 a.m.

police went to Tural and drew the inquest panchanama and sent the dead body for postmortem. They also drew the panchanama of the place of offence. PSI then recorded the statement of various witneses and arrested the accused at Chiplun on 4.5.1988. At that time PSI noticed that the clothes which were on the person of the accused were blood stained. Hence, he attached the clothes under panchanama. When the accused was in the police custody, he made a statement before the police on 7,.5.1988 that he would produce the knife concealed by him in the bushes and accordingly police recorded the statement and thereafter the accused led police and panchas to the said place and produced the knife. The police attached the said knife which is Article 26 before the Court. The police had also attached the clothes of the injured as well as the deceased. They sent all the attached property to C.A. The police had also received the postmortem report wherein the doctor had opined that the death of Savitri was caused due to shock and haemorrhage due to stab injury to chest causing injury to left lung and heart. After completion of the investigation police submitted chargesheet in the Court of JMFC, Devrukh against the accused for the offences punishable

under Section 302, 307 and 325 of I.P.C.

7. Finding that the accused was chargesheeted for the offences which were exclusively triable by the Court of Sessions, the learned JMFC, Devrukh committed the case to the Court of Sessions Ratnagiri.

8. The learned Sessions Judge, Ratnagiri framed charge Exhibit 2 against the accused for the offences mentioned above. The charge was read over and explained to the accused. He pleaded not guilty and claimed to be tried. From the suggestions put to the prosecution witnesses and from the statement of accused recorded under Section 313 Cr.P.C. it appears that the defence of the accused was of total denial. According to him as there was some quarrel between him and Sakharam, he was falsely implicated by Sakharam in the offence in question.

9. In order to prove the charge levelled against the accused, the prosecution has examined as many as 13 witnesses consisting of P.W.1. complainant Adik Mohite- Exhibit 8, P.W.2 panch Vishram Harekar-exhbit 10, another panch who acted

as panch for the attachment of the clothes of the accused-P.W.3 Akbar Kapadi-Exhibit 12, P.W.4 panch witness Shanker Shinde-Exhibit 14, P.W.5 another panch Sakharam Gurav-Exhibit 16, injured eye witness P.W.6 Sakharam Jadhav-Exhibit 20, another injured eye witness P.W.7 Sulochana Chavan Exhibit 21, witness Raju Mohite Exhibit 22, Dr. Vaidya, who examined Sakharam on 3.5.1988 Exhibit 24, P.W.10 Dr. Satish Desai- Medical Officer, Sangmeshwar Primary Health Centre-Exhibit 25, another panch witness namely Suresh Gudekar -Exhibit 29, PSI Padmakar Juikar-Exhibit 31 and P.W.13 Dr. Kumar Nanaware-Exhibit 42, who did the postmortem on the dead body of Savitri.

10. The prosecution produced several documents such as inquest panchanama Exhibit 6, panchamama of clothes of deased Savitri-exhibit 9, panchanama of place of offence -Exhibit 11, panchanama of clothes of accused -Exhibit 13, statement made by accused regarding pointing out the place where the knife was concealed Exhibit 17, panchanama regarding discovery Exhibit 18, arrest panchanama Exhibit 30, C.A. report exhibit 34 to 40 and post mortem notes Exhibit 43.

11. After considering the evidence adduced by the prosecution the learned trial judge came to the conclusion that the evidence of doctor Nanaware who did the post mortem on the dead body of Savitri shows that the injuries sustained by her cannot be caused by the knife alleged to have been discovered at the instance of accused. According to him when prosecution had specifically come out with a case that the accused assaulted Savitri and other two injured persons with knife before the court, the evidence of doctor creates doubt about the prosecution version. According to the learned trial Judge, neither the injured Sakharam nor Sulochana were knowing the name of the assailant till the morning of 3.3.1988. So, according to him though there was some evidence to create suspicion against the accused, the same was not sufficient to prove the guilt beyond reasonable doubt. He, therefore, acquitted the accused.

12. Being aggrieved by the above mentioned order of acquittal, the State has filed the present appeal. In this appeal before us, the learned APP submitted that the learned trial Judge has not at

all properly appreciated the evidence on record. The learned trial Judge has ignored the important evidence of the injured eye witness and without giving any valid reason for discarding their testimony given undue importance to some stray statement that have been made by the doctor and held that the prosecution has not proved the offence in question. He, therefore submitted that the entire appreciation of evidence done by the learned trial judge being erroneous and faulty, this is a fit case where the Appellate Court can intervene and allow the appeal and convict the accused for the charges levelled against him. As against this, Shri Kazi, learned Advocate for the accused submitted that the view taken by the learned trial Judge cannot be said to be unreasonable. According to him it is a possible view and as such in appeal against acquittal the High Court should not interfere with the finding of acquittal. He, therefore, submitted that the appeal be dismissed.

13. It is not in dispute that about 15 days prior to the date of the incident which is 2.5.1988, the prosecution witness No.6 alongwith his family members had started residing at village Tural. It

is also an admitted fact that at that time his daughter Sulochana was also residing with him. It is not in dispute that the incident took place on 2.5.1988 and the dead body of Savitri was found at the place of offence by the police on 3.5.1988. When the dead body was sent for postmortem and the postmortem was carried out, Dr. Nanaware found the following injuries on the person of deceased Savitri. The same are mentioned in column 17 of the postmortem notes which are as under:

> "1. Stab wound 2.00cm X 0.5am, tranverse over (lt) upper chest, 6.00c.m. above & 3.00 cm lateral to (lt) nipple, margin clear cut, upper margin slightly contused, depth cavity dee. (1) stab wound, 2.00 X 0.5 cm. transvere, over back in midline over midway of spinal cord, margin clear cut, edges sharply cut, depth-muscle deep.(4.00 c.m)

. The doctor has also noticed that he found following internal injuries as mentioned in column 19 of the postmortem notes.

" Stab wound on (lt) 3rd inter coastal space corresponding to erect wound No.(1) Plura pierce at 3rd left inter coastal space; left lund strb 2cm x 5cm corresponding to exernal wound No.1 passing through left lung weapon and had entered left pericardium & pierced left venbtricle into cavity, large hameopedicardial present; large amount of blood and blood clots present in left chest cavity."

. The doctor has specifically opined that the injuries found on the person of Savitri were antimortem and the same can be caused due to blow with knife. He has given the cause of death as shock and haemorrhage due to stab injury to chest, injury to left lung and heart. So, from this evidence the learned trial Judge has rightly held that the prosecution has proved that the death of Savitri was homicidal. It must be noted that it is not even the case of the defence that Savitri's death was not homicidal.

14. The prosecution has examined Dr.Satish Desai, Exhibit 25 who had examined prosecution

witness injured Sakharam and prosecution witness No.7 Sulochana. He has stated that on examination he found following injuries on the person of Sakharam.

> "A penetrating wound 1/2 " to the right of midline ablong shape with gaping of wound intestine and omentum protruding out dimensions are approx. 3" in length and oblong shape extending from 1" above the umbilical upwards"

He has also stated that he noticed following injuries on the person of Sulochana @ Dipali Dilip Chavan i.e. wife of accused.

> "1) Incised wound 1" x 1/2" and gaping over right breast 1" above and lateral to nipple.
>
> 2) 1/2" length labour gaping on left thigh 2" above knee joint on anterior medio aspect.

3) Incised wound 1/2" length gaping over left thigh anterior lateral aspect 3" above the knee joint.

4) Incised wound 1" in length gaping over left thigh posterior lateral aspect 6" above the knee joint.

15. The main and the material question is whether the death of Savitri and the injuries which were found on the person of Sakharam and Sulochana were caused at the hands of accused. In order to prove the same, the prosecution has mainly relied on the two injured eye witnesses, namely P.W.6 Sakharam Ganpat Jadhav-exhibit 20 and P.W.6 Sulochana Dilip Chavan-Exhibit 21 witness Sakharam has categorically stated that on that day when he was sleeping in the courtyard, he received blow with knife on his stomach and when he opened his eyes and he saw that the accused was with knife and he was about to give another blow to him. He has further stated that he pushed the accused and put his hand on the stomach and raised shouts and on hearing the shouts Savitri i.e. his wife woke up and the accused gave knife

blows on the back and chest of Savitri and when both of them raised shouts Sulochana also woke up and the accused gave knife blows on the chest and thigh of Sulochana. This evidence of Sakharam is fully corroborated by witness Sulochana. This evidence of Sakharam is corroborated by witness Sulochana. She has stated that after hearing the shouts she woke up and she found that accused was giving the blows to her mother and when she tried to rescue, the accused gave blows to her with knife and ran away from the said place. It is pertinent to note that she has not stated anything about the blow given by the accused to Sakharam because even as per Sakharam's evidence it is only after the time accused gave blow to him on his stomach and he raised shouts, thereafter Savitri and Sulochana awoke. So, evidence of Sulochana also shows that she is a truthful witness. She has deposed whatever she had seen. It must be noted that both these witnesses have been examined by Dr.Satish on the next day. At that time he found above mentioned injuries on their person. He has also stated that the said injuries are possible due to knife blow. It is not at all the case of defence that the said injuries were not received by these two witnesses at the relevant time

or the same were not received due to knife blows. So, under such circumstances, we find that the evidence of these two eye witnesses is clearly supported by the medical evidence. There is no reason why these witnesses should leave aside the real culprit and involve the accused who is infact the son in law of P.W.6 Sakharam and husband of P.W.7. Sulochana. It is true that there was some dispute between Sulochana and her husband, but at the same time we can not forget the fact that it was not a case where the accused was not at all visiting the house of the father in law i.e. Sakharam. On the contrary, we find that even in his statement under Section 313 Cr.P.C. the accused had clearly admitted that he had been to the house of the prosecution witness No.6 Sakharam and he was insisting that Sulochana should be sent alongwith him to Sakharappa and the prosecution witness No.6 was saying that first the accused should search a job and place for residence and then take Sulochana alongwith him. So, we find that P.W.6 was even ready to send Sulochana with him. This also indicates that the relation between the accused and these prosecution witnesses were not so strained that they would go to the length of involving him

falsely and that too in a case of murder.

16. An attempt has been made on behalf of the prosecution defence to show that according to Sakharam, immediately after receipt of the blow Sakharam had become unconscious and as such there was not opportunity for him to see the assailant. It is true that Sakharam had sustained severe injury as a result of which some part of his intestine had come out. However, that does not mean that immediately after the time he received the blow and he opened his eyes he had not seen the assailant i.e. accused who was very much present there with knife. It is equally true that subsequently Sakharam became unconscious and he regained consciousness on the next day, but exact time when he became unconscious is not known. There is no evidence in that behalf. Under such circumstances, one cannot jump to the conclusion that the moment he received the blow he became unconscious. However, it appears that the learned Trial Judge had not read the cross examination of Sakharam in its proper perspective and has given undue importance to his stray statement that after he was assaulted he became unconscious and regained consciousness on the next

day. We can not ignore the fact that though he has stated accordingly in the cross examination, he has at the same time stated that immediately after receiving the blow he had seen the accused. Not only that, but when Adik i.e. the complainant rushed to the house and made query to him he had even told the name of the accused as the assailant to the complainant. So, one has to read the evidence of the witness as a whole. As the question was put to the witenss in cross examination that he regained consciousness on the next day, he answered in the affirmative. But, that by itself is not sufficient to jump to the conclusion that he had become unconscious the moment he received the blow. Then it must also be noted that the evidence of witness Sakharam is not at all shaken or shattered in the cross examination. There are absolutely no material omissions and contradictions in his evidence. Even then the learned trial Judge without considering his evidence as a whole and ignoring the important aspect that he is not only an eye witness, but the injured eye witness held that Sakharam's evidence is not sufficient to prove the guilt of the accused. The learned trial Judge has observed in paragraph 19 that Sakharam has given admission that

as there was quarrel on that day in the morning he suspected assailant to be accused. We have carefully gone through the entire deposition of Sakharam, but we do not find any such admission given by Sakharam. We are of the view that the learned trial Judge has in fact totally misquoted the admission mentioned above. If we carefully read the deposition of Sakharam we find that Sakharam wanted to convey or state that as in the morning there was some dispute, that might have given rise to accused to assault them. So, the learned trial Judge has infact misread the evidence of Sakharam.

17. It is tried to be suggested that at the relevant time there was dark and as such the injured eye witnesses had in fact no opportunity to see the assailant. While considering this aspect it must be noted that it has come on record that on that day there was moonlight. Merely because in police statement the witness had not stated that there was moonlight, it cannot be said that this is a material omission. Besides this, it has also come on record that there was tublelight in the adjoining house. The deceased and the injured were admittedly sleeping in the courtyard, those being summer days.

So, it cannot be said that there was total darkness. Besides, this we cannot ignore the fact that the assailant was not a stranger. So far as Sulochana is concerned, the assailant is her husband. So, even by looking to the stature and general figure she was in a position to identify the accused when he was so close to them. There is no evidence in the argument advanced by the defence that there was no opportunity for these witnesses to identify the assailant.

18. There is another very important drawback in the judgment of the learned trial Judge. It must be noted that the learned trial Judge has not at all taken into consideration the evidence of witness Sulochana Chavan P.W.7-exhibit 21. Thus, we find that the learned trial Judge has totally ignored the testimony of the injured eyewitness. It must be stated that there is material lacuna in the said judgment and as such it is absolutely essential for the Appellate Court to consider the entire evidence brought by the prosecution.

19. Witness Sulochana has also categorically stated that she saw accused giving knife blow to her

mother. She has also stated that when she tried to intervene, accused also assaulted her with knife. She also disclosed this immediately to Adik. Nothing in brought in her cross examination so as to create any doubt about her testimony. There is no reason why she should falsely depose against her husband. So we have no hesitation to accept her testimony.

20. The prosecution has examined the complainant Adik Baban Mohite at Exhibit 73. It is not in dispute that his house is situated on the backside of the house of P.W.6 Sakharam. Adik has stated that at about 11.00 or 11.30 p.m. he heard shouts and at that very time Ashok and Laxman, children of Sakharam came to him and informed him that accused assaulted Sakharam, Savitri and Sulochana. Certainly, it would have been better if these two witneses would have been examined, but for the reasons best known to the prosecution these two witnesses namely Ashok and Laxman who are the children of Sakharam are not been examined. But that by itself is certainly not sufficient to come to the conclusion that the prosecution has failed to adduce material evidence. It is nobody’s case that

these two witnesses had actually seen the incident. So, their non examination is certainly not fatal to prosecution. Be that as it may, the fact remains that Adik came to know about the alleged incident and he immediately rushed to the house of deceased. He has stated that at that time he found that Savitri as well as Sakharam had received serious bleeding injuries and when he made query, both of them told him that accused assaulted them with knife. He has also stated that Sulochana told him that accused assaulted her with knife. Much is made about the fact that this witness did not take the injured person immediately to the hospital or that he did not go to the police station or did not give any telephonic call to police. However, the said witness has given justifiable reason for not doing so. He has stated that though the phone was available in the shop near about, the said shop was closed. He has also stated that there was no vehicle available for immediately taking the injured to the hospital or for him to go the police station.

21. It is pertinent to note that complainant Adik Baban Mohite is totally an independent witness. It is nowhere even suggested to him that he has any

special interest in the deceased or injured Sakharam and having any animus against the accused. We find that in his complaint which is lodged after few hours from the incident, he has specifically mentioned the name of the assailants and his source of coming to know the name of the assailants. If the theory of defence that Sakharam was not at all in position to speak and was unconscious is accepted then there is no question of Sakharam telling the name of accused to this witness. It must be noted that on the next day morning this witness has gone to the police station which was at a distance of 10-12 kilometres and lodged the complaint. All that is suggested to him is that he consulted some persons from Belder community and then filed the complaint. This is a very vague suggestion. There is nothing to indicate that he lodged the complaint or named the present accused falsely without coming to know anything about the incident. So due weightage shall have to be given to the evidence of this independent witness which also clearly supports testimony of the above mentioned two injured eye witnesses.

22. Admittedly police station is at a distance

of about 10 to 12 kilometres from the place of offence. It does appear that there is some discrepancy about whether several other persons had gathered at the place of offence after the incident and if so at what time etc. However, that is not very material while assessing the evidence of these two injured witnesses and the evidence of complainant. it is pertinent to note that even if we assume for the sake of argument that when complainant reached at the place of offence Sakharam and Savitri were not in a position to state the name of the assailant, still so far as Sulochana is concerned she was definitely in a position to tell the name of the assailant. She had also sustained injuries at his hands. So, if we read evidence of complainant alongwith the evidence of the above mentioned injured eye witness it is very clear that the prosecution has adduced sufficient evidence to show that it was the accused who assaulted Savitri, Sakharam and Sulochana at the relevant time.

23. The prosecution has examined another witness by name Raju Mohite-Exhbit 22. He is the brother of the complainant. He also resides at the house of the complainant. He has stated that after

the time there was hue and cry he had also rushed towards the house of the deceased and when he was proceeding accordingly he saw the accused running away from the house. It must be noted that this witness has not stated accordingly for the first time in the court. There are no omission or contradiction in his evidence. So, there is no reason to disbelieve the evidence of witness Raju. Even if, we assume for the sake of argument that his evidence is not trustworthy because complainant has not stated that Raju had come there, still then the entire evidence of prosecution cannot be discarded merely on the ground that the evidence of Raju does not inspire confidence.

24. There is another piece of evidence which also lends support to the prosecution version. The prosecution has brought on record that when the accused was in the police custody on 7.5.1988 he made a statement before the police that he would produce the knife concealed by him and accordingly police recorded the statement in presence of panchas and then accused led panchas and the police towards his house and from the bushes he produced one knife. The prosecution has also come with the case that the

knife before the court is the same. The learned trial Judge disbelieved this evidence mainly on the ground that the knife was recovered from the open space and so it was possible for any one to plant the same at the said place. This reasoning is not acceptable, particularly when there is nothing on record to indicate that the police had knowledge about such planting. When the accused has pointed out a particular place and knife was recovered from that place and it has not come on record that the knife was visible to any one,the observation made by the learned trial Judge does not stand to reasons. From the perusal of the judgment of the learned trial Judge we find that he has given undue importance to the evidence with regard to the knife and the medical evidence given by Dr. Kumar Nanaware. The learned trial Judge has observed that Dr. Nanaware has given admission that the injuries sustained by Savitri are not possible by the knife before the court. Firstly, it must be noted that this is again totally wrong observation made by the learned trial Judge. We do not find any such specific admission given by the doctor. On the contrary he has categorically stated in his examination in chief that the injuries sustained by

Savitri are possible with knife before the Court. Not only that but even in cross examination he has stated "I can not say definitely looking to the length of M.A.No.26 (knife) the injury mentioned in this particular case cannot be caused by this weapon." So, it seems that the learned trial Judge has proceeded completely on wrong footing by holding that the doctor has clearly stated that the injuries in question are not possible with the knife before the Court. It appears that an attempt was made on behalf of the defence to show that there is some discrepancy in the nature of the injuries sustained by Savitri and the weapon used for such injuries. An attempt is made to show that the injuries in question cannot be caused due to knife before the court. Firstly, it must be noted that there is in fact no cogent and convincing evidence to hold specifically that the injuries in question are not possible by the knife before the Court. Besides this, even if we assume for the sake of argument that in view of doctor’s evidence it cannot be said that the injuries in question are caused by the knife before the court. But that does not mean that the entire prosecution story should be thrown over board. Nor such type of evidence is sufficient to

discredit the legal, reliable and unimpeachable evidence of two injured eye witnesses. The learned trial Judge has relied upon the authority **1975 SCC (Criminal) page 577** wherein it is observed that where the evidence of witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonable explanation is given the said defect is sufficient to discredit the entire case. We have carefully gone through the above mentioned ruling. The facts of the said case and the facts of the case in hand are quite different. In that case there was conflict between the medical evidence and the ballistic expert’s evidence because that was the case of murder by shooting the person with gun. Here it is not so. There is no material inconsistency. Some feeble attempt is made to show that the injury in question does not correspond with the weapon in question. So, the above cited ruling is of no help to the defence. Similarly, the learned trial Judge has also given importance to the obervation made by the Apex Court in a case reported in **1953 Cri.L.J. 1761** wherein it was observed that in a case where death is due to injuries and wounds

caused by lethal weapon it is always duty of the prosecution to prove by expert evidence that it was likely or atleast possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where prosecution has definite or positive case it must prove the whole of the case. The above proposition is not disputed and cannot be disputed. However, it must be noted that it was also a case where the person was shot dead. So, the facts of the said case and the facts of the case in hand are different and as such the above cited ruling is of no help to the defence and the learned trial Judge has wrongly relied on the same.

25. It is needless to say that there are various authoritative pronouncement in which it has been held that medical evidence can not over ride direct evidence about assault by particular weapon when direct evidence is satisfactory and reliable. It has been so held in **Punjabsingh Vs. State of Haryana AIR 1984 SC 1233.** Even in a case **Manga vs. State of Haryana AIR 1979 SC 1194** observed that when there is direct evidence about the time and date of the occurrence the medical evidence can hardly be

relied upon to falsify the evidence of the eye witness because medical evidence is judged by various factors based on guess and certain calculations. So, merely because in the instant case depth of the injury was not about four inches but it was only about three and quarter inches or so, we can't jump to discard the direct evidence of the injured eye witnesses particularly when the same is not at all shown to be unreliable. As pointed out above it appears that the learned trial Judge has wrongly proceeded with assumption that the doctor has given admission that the injuries in question are not possible due to knife before the Court. He has attached undue importance to some of the observations made by Dr. Nanaware in his cross examination made in the trial court long after the postmortem, without correctly and fully appreciating the overall effect of his evidence. In fact, the learned trial Judge ought to have considered the over all evidence of Dr. Nanaware.

26. It is pertinent to note that the complainant Adik Mohite Exhibit 8, injured eye witness Sakharam Ganpat Jadhav-Exhibit 20, and another injured eye witness Sulochana Dilip Chavan Exhibit 21 were

searchingly cross examined on behalf of the defence, but hardly any material could be brought out during their cross examination to discredit their evidence. In our considered view the approach of the learned trial Judge was totally unrealistic, unreasonable and unacceptable. So, in our opinion this is a fit case where it is necessary to interfere with the finding of acquittal recorded by the learned trial Judge. In view of the above discussion we have no hesitation to hold that the prosecution has in fact brought on record cogent, consistence and convincing evidence to prove beyond reasonable doubt that at the relevant time the accused assaulted Savitri with knife and thereby caused her death. He also gave knife blow on the vital part of the prosecution witness Sakharam and thereby caused serious injury which in the opinion of doctor was sufficient in the ordinary course of nature to cause death. The blows given to Savitri were also on vital part and Savitri died within few minutes after the assault. So, considering all these aspects we hold that the accused is guilty of the offence of committing murder of Savirti and causing grevious hurt with deadly weapon to Sakharam. He has also caused injuries with deadly weapon to Sulochana. Thus, he

is guilty of the offences punishable under Section 302 of I.P.C. and 326 of I.P.C. We, therefore, pass the following order:

ORDER

. The appeal is allowed.

2. The order passed by the Sessions Judge, Ratnagiri, acquitting the accused of the offences punishable u/s.302 & 326 of IPC is set aside. Instead, the accused is convicted for the offence punishable under Section 302 of IPC and sentenced to suffer R.I. for life and to pay fine of Rs.1000/- i.e. to suffer R.I. for three months.

3. The accused is also convicted for the offence punishable under Section 326 of IPC and sentenced to suffer RI for five years and to pay fine of Rs.500/- i.d. to suffer R.I. for one month.

4. The order of acquitting accused of the offence punishable u/s. 307 of IPC is upheld.

5. The accused is also convicted for the offence punishable under Section 324 of IPC for voluntarily causing hurt by dangerous weapon to Sulochana and is sentenced to suffer R.I. for one year and to pay fine of Rs.300/- i.d. to suffer RI for 15 days.

6. All the substantive sentences to run concurrently.

7. Accused is entitled to get the set off for the period of detention undergone by him in connection with this offence as per Section 428 of Cr.P.C.

8. The accused to surrender bail within eight weeks from today, failing which the trial Court to take necessary steps to arrest the accused and send him to jail to undergo sentence mentioned above.

(D.G.Deshpande, J.)

(S.R.Sathe, J.)